

Attorneys for Complainant

1 be filed within 15 days after service of the accusation. [Govt. Code sections 11506(a) and
2 (b)].

3 2. California Government Code section 11520 provides, in pertinent part:

4 "(a) If the respondent either fails to file a notice of defense or to appear at the
5 hearing, the agency may take action based upon the respondent's express
6 admissions or upon other evidence and affidavits may be used as evidence
7 without any notice to respondent...".

8 3. The Board of Accountancy, Department of Consumer Affairs ("Board"), is
9 authorized to revoke respondent's Certified Public Accountant License pursuant to California
10 Business and Professions Code ("Code") section 5100, which, at all time material herein, has
11 provided, in pertinent part, that "the Board may revoke, suspend or refuse to renew any
12 permit or certificate" issued by the Board for unprofessional conduct, including, but not
13 limited to:

14 5100 (c) Dishonesty, fraud, or gross negligence in the practice of public
15 accountancy.

16 5100 (f) Willful violation of the Accountancy Act or any rule or regulation
17 promulgated by the board.

18 5100 (h) Fiscal dishonesty or breach of fiduciary responsibility of any kind;

19 5100 (i) Knowing preparation, publication or dissemination of false, fraudulent,
20 or materially misleading financial statements, reports, or information.

21 5100 (j) Embezzlement, theft, misappropriation of funds or property, or
22 obtaining money, property or other valuable consideration by fraudulent
23 means or false pretenses.

24 4. Code Section 5050 provides that no person shall engage in the practice of public
25 accountancy in California unless the person holds a valid permit to practice public accountancy
26 issued by the Board. Code Section 5051 sets forth the definition of "public accountancy" and
27 includes in said definition any of the following: holding out to the public as skilled, qualified
and ready to render professional service as a public accountant for compensation; maintaining
an office for the transaction of business as a public accountant; and offering to prospective

1 clients to perform, for compensation, defined professional services. Code section 5051(h)
2 provides that, when "holding out," a person is engaged in the practice of public accountancy
3 when preparing personal financial or investment plans or providing to clients products or
4 services of others in implementation of personal financial or investment plans.

5 5. Code section 5121 provides that certain displays and utterances involving the
6 words "certified public accountant" are prima facie evidence of "holding out" as a certified
7 public accountant holding a valid certificate to practice accountancy in California.

8 6. Code section 5070.5 provides in pertinent part that certificates, which are issued
9 for a period of two years, expire on the last day of the month of the legal birthday of the
10 licensee if not renewed, and further provides that, in order to renew the license, the licensee
11 must apply on the required form, pay a renewal fee, and provide evidence to the Board of
12 compliance with continuing education provisions.

13 7. The Board's regulations are codified in Title 16 of the California Code of
14 Regulations, sections 1-99.^{1/} Board Rule 94 provides that the failure of a licensee engaged in
15 public practice to comply with applicable continuing education rules constitutes cause for
16 disciplinary action.

17 8. Board Rule 87(a) requires that a licensee complete at least 80 hours of
18 qualifying continuing education during every two-year period immediately preceding permit
19 renewal. Board Rule 89(a) requires the submission of a signed statement, under penalty of
20 perjury, that all applicable continuing education requirements have been met.

21 9. Board Rule 89(g) provides, with regard to continuing education, that a
22 licensee's willful making of any false or misleading statement, in writing regarding his or her
23 continuing education shall constitute cause for disciplinary action pursuant to section 5100(f)
24 of the Accountancy Act.

25 10. Board Rule 57 provides that a licensee shall not concurrently engage in the
26

27 1. The Board's rules, codified at Title 16 of the California Code of Regulations in sections 1-99, are
hereinafter referred to as "Board Rule." Thus, for example, 16 C.C.R. section 87(a) is Board Rule 87(a).

1 practice of public accountancy and in any other business or occupation which impairs the
2 licensee's independence, objectivity, or creates a conflict of interest in rendering professional
3 services.

4 11. Board Rule 58 requires that a licensee engaged in the practice of public
5 accountancy comply with all applicable professional standards.

6 12. Applicable standards of practice pertinent to this accusation include, without
7 limitation, the following sections of U.S. Department of Treasury Circular 230 (regulations
8 governing practice before the Treasury Department):

9 a. Section 10.22 requires that an individual practicing before the Internal
10 Revenue Service exercise "due diligence" in the following three areas:

- 11 (1) preparing, assisting, approving and/or filing returns and other
12 documents with the Service;
- 13 (2) determining the correctness of oral and written representations
14 made by the practitioner to the Department of the Treasury;
- 15 (3) determining the correctness of the oral and written
16 representations made by the practitioner to clients with reference to any
17 matter administered by the Internal Revenue Service.

18 b. Section 10.23 requires the disposition, by a certified public accountant,
19 of any matter before the IRS without unreasonable delay.

20 13. The AICPA *Code of Professional Conduct* consists, *inter alia*, of Section I-
21 Principles and Section II-Rules. The Principles are contained in six articles, relevant herein:

22 Article I (Responsibilities);
23 Article II (The Public Interest);
24 Article III (Integrity);
25 Article IV (Objectivity and Independence);
26 Article V (Due Care); and
27 Article VI (Scope and Nature of Services).

Relevant herein, without limitation, from Section II-Rules are:

Rule 102 (Integrity and Objectivity): "In the performance of any professional
service, a member shall maintain objectivity and integrity, shall be free of

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1 conflicts of interest, and shall not knowingly misrepresent facts or subordinate
2 his or her judgment to others."

3 14. Code section 5107 provides that in any Order issued in the resolution of a
4 disciplinary proceeding before the Board, the Executive Officer of the Board may request the
5 Administrative Law Judge to direct the certificate holder in violation of Code sections 5100(c),
6 (i), (j) or the fiscal dishonesty provisions of section 5100(h) to pay to the Board a sum not to
7 exceed the actual and reasonable costs of the investigation and prosecution of the matter,
8 including attorney's fees.

9 15. Pursuant to Code section 118(b), the suspension, expiration, or forfeiture by
10 operation of law of a license issued by the Board shall not, during any period in which it may
11 be renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or
12 continue a disciplinary proceeding against the licensee upon any ground provided by law or to
13 enter an order suspending or revoking the license or otherwise taking disciplinary action
14 against the licensee on any such ground. Code section 5070.6 provides that an expired permit
15 may be renewed at any time within five years after its expiration upon compliance with certain
16 requirements.

17 FINDINGS OF FACT

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19 16. On or about October 2, 1981, Certified Public Accountant Certificate No. CPA
20 32900 was issued by the Board to Robert F. Hill ("Respondent"). The certificate, which is
21 required to be renewed every two years,² was last renewed on or about April 27, 1996, for a
22 two-year period, based in part upon Respondent's certification that he met the applicable
23 requirements for continuing education. The certificate subsequently expired April 1, 1998 and
24 has not been renewed.

25 17. On or about September 16, 1998, Complainant Carol B. Sigmann, in her
26

27
2. See Business and Professions Code section 5070.5.

1 official capacity as Executive Officer of the Board, filed Accusation No. AC-99-6 against
2 Respondent. A copy of the Accusation is attached hereto as Exhibit A and incorporated
3 herein.

4 18. On or about September 16, 1998, Amy Calhoun, an employee of the Office of
5 the Attorney General, sent by certified, first class, and overnight mail a copy of Accusation
6 No. AC-99-6, Statement to Respondent, Government Code sections 11507.5, 11507.6 and
7 11507.7, the Notice of Defense form, and a Request for Discovery, to Respondent's address
8 of record with the Board, which was and is 2230 W. Sunnyside, Suite 6, Visalia, California
9 93277.. Neither the first class mailing nor the overnight mail has been returned. The certified
10 mailing was returned to the Office of the Attorney General on October 9, 1998, marked
11 "unclaimed". The above-described service was effective as a matter of law provisions of
12 California Government Code section 11505(c).

13 19. Respondent failed to file a Notice of Defense within 15 days after service of the
14 Accusation upon Respondent, and therefore, Respondent waived his right to a hearing on the
15 merits of Accusation No. AC-99-6.

16 20. The actual and reasonable costs of the Board's investigation and prosecution of
17 this case are \$ 8,255.88.

18 21. Pursuant to its authority under Government Code section 11520, and based on
19 the evidence before it, the Board finds that the following allegations contained in Accusation
20 AC-99-6 are true:

21 **CLIENT B.M.**

22 a. One of Respondent's clients was Mrs. B.M. (hereinafter "B.M."), who
23 considered Respondent's mother one of her best friends and who has known Respondent since
24 his birth. After the death of her husband in April 1989, B.M. sought Respondent's assistance
25 in financial matters. Respondent's relationship with B.M. was of a fiduciary nature. Over a
26 period of years, Respondent engaged in unprofessional conduct in connection with B.M.'s
27 financial matters in that respondent misappropriated funds from B.M. in the total amount of

1 \$363,805 (not including tax penalties or interest, loss of interest, or other income), as more
2 fully set forth below:

3 (1) In July 1989, B.M. gave Respondent \$100,000 to be invested.
4 Respondent represented that he invested B.M.'s funds in the "Kemper Vista Group Bond
5 Fund." He was appointed trustee of the "subscribed investment," a purported mutual fund,
6 and, as trustee, was authorized to receive information concerning such investment; to complete
7 the deposit of monies held in trust for the subscriber; and to receive earnings information on a
8 monthly and annual basis. B.M. was provided a copy of a Subscription Agreement and Power
9 of Attorney for the "subscribed investment." However, B.M.'s funds were used by
10 Respondent to finance real estate enterprises with which Respondent was affiliated as a partner
11 or owner (see paragraph 21a(2)). B.M. was essentially an unsecured lender in Respondent's
12 venture, the development of real estate subdivisions. B.M. received \$1,000 per month
13 through February 1997, after which the payments stopped. B.M.'s \$100,000 investment has
14 not been recovered.

15 (2) In or about December 1992, Respondent asked B.M. for \$75,000
16 to invest in "Kingsburg Municipal Bonds" which did not, in fact, exist. Instead, respondent
17 misappropriated the funds to further his own financial goals in connection with his position as
18 a principal in the following under-capitalized real estate development schemes: Silver Brook
19 Estates in Kingsburg; Willow Springs in Coalinga; and Dinuba, Selma and Foothill Estates in
20 Orosi. These "investments" were not secured by second trust deeds. B.M. did not recover
21 any of these funds nor did she realize any "investment" return.

22 (3) In or about July 1993, at Respondent's request, B.M. loaned
23 Respondent \$35,000, which respondent failed to repay. The terms of this unsecured loan are
24 not evidenced by a writing.

25 (4) In or about November 1994, B.M. became seriously ill and was
26 hospitalized for 63 days. During a lengthy period of convalescence, Respondent assisted B.M.
27 in conducting her affairs. Although authorized, as her fiduciary, to write checks on her

1 account to pay B.M.'s bills, Respondent wrote the following unauthorized checks on one of
2 B.M.'s checking accounts for his own personal gain and without B.M.'s knowledge or
3 consent:

<u>Check No.</u>	<u>Check Amount</u>	<u>Check Date</u>	<u>Payee</u>
1011	\$20,000	01/10/95	Michael Phillips
1013	\$35,000	02/03/95	Terra West Real Estate ^{3/}
1014	\$ 8,500	02/09/95	Terra West Real Estate
1015	\$ 5,000	02/13/95	Terra West Real Estate
1017	<u>\$ 4,005</u>	02/18/95	Union Bank ^{4/}
TOTAL	\$72,505		

12 These funds were not recovered.

13 (5) In 1996, respondent prepared B.M.'s 1995 tax returns but failed
14 to file them or provide a completed file copy to B.M. However, Respondent showed B.M.
15 copies of checks he falsely represented that he had written to the taxing authorities in payment
16 of B.M.'s tax liability, and requested reimbursement. He obtained two checks from B.M.,
17 payable to respondent, in the amounts of \$20,681 (dated 4-15-96) and \$25,669 (dated 6-7-96),
18 which he then deposited. The payments were never made by Respondent to the taxing
19 authorities, nor did he file the returns. These funds have not been recovered by B.M.

20 (6) Respondent was also engaged to prepare and file tax returns for
21 the 1994 and 1996 tax years for B.M. He led B.M. to believe he had filed them but failed to
22 do so.

23 (7) In or about June 1995, Respondent requested, and received, from
24 B.M. a check in the amount of \$4,950. Respondent misrepresented the purpose for this
25

26 3. This entity is connected with Respondent's real estate development enterprises. The notation on these
27 checks drafted to Terra West Real Estate was "loan."

4. Respondent purchased a Cashier's Check with this check.

1 payment, failed to provide an accounting of the use of the money and used the funds for his
2 own purposes.

3 (8) In or about September 1996, Respondent requested and received
4 two loans from B.M. in the amounts of \$15,000 each. Respondent provided a note for one of
5 these loans which he then tore up upon presenting B.M. with his personal check in the amount
6 of \$15,000 plus interest, which subsequently "bounced." Therefore, B.M. was not repaid
7 either of these "loans."

8 (9) Respondent kept most existing documentation regarding the
9 various transactions described above, and refused to provide B.M. with said documentation,
10 even after admitting to her in September 1997, that he made misrepresentations to her and that
11 he could not return her money or purported investments.

12 CLIENT S.P.

13 b. Respondent's relationship with S.P. was of a fiduciary nature.
14 Respondent performed accounting services for S. P. for several years and S.P. subsequently
15 became an "investor" in Respondent's real estate development enterprises, specifically making
16 construction loans in housing developments in Coalinga and Dinuba. S.P. loaned \$15,000 in
17 July 1993, \$20,000 in October 1993,^{5/} and \$4,000 in January 1994 to Willow Springs
18 Developers, Inc., of which Respondent was President and sole owner. Respondent provided
19 her with a "Construction Funding Account Balance Recap" which led her to believe that her
20 investment was viable. Respondent's only "withdrawals" from the account amounted to
21 \$5,699.76 (in March 1995, January 1996, and November 1996). Otherwise, her capital
22 investment, accrued interest, and "earnings", which, according to Respondent's March 1997
23 accounting totaled \$47,086.92, have not been repaid.

24 c. Respondent prepared S.P.'s tax returns. When S.P. questioned whether
25 a Form 1099 was necessary, or whether income from the investment needed to be reported,
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27 5. This is the only investment of the three for which S.P. received a "deposit receipt," which provided that she would earn a 4% fee for a period of 75 days from date of deposit, and that principal and fees earned would be subject to reinvestment at her direction upon maturity.

1 respondent advised her that this type of investment did not require reporting.

2 d. In response to S.P.'s concerns about the security of her investment,
3 Respondent drove her around the subdivision, made representations regarding the value of the
4 lots being developed, and chose a lot to serve as "security" for her investment. He provided
5 S.P. a promissory note dated October 2, 1994, which promised to pay on demand \$45,824,
6 and "unconditionally guaranteed" all the obligations of the promissory note. The note
7 indicates that the loan is secured by a deed of trust.

8 e. Respondent provided S.P. with a deed of trust which was prepared on
9 October 2, 1994,^{6/} and requested that she not record it.^{7/} However, as S.P. subsequently
10 learned, the property ostensibly securing the note was sold shortly after Respondent provided
11 her with these documents.

12 f. S.P. requested the return of her money in 1997 and was informed by
13 Respondent that it was invested in "bank treasuries", an investment S.P. had not authorized.
14 Subsequently, in or about July 1997, S.P. requested to be "cashed out" of her "construction
15 fund account." Respondent informed S.P. that her money had been lost "in the first year"
16 when the "sub-division went broke."

17 **INVESTORS FRANCO AND MERRY BERNARDI**

18 g. Mr. and Mrs. Franco Bernardi (hereinafter "the Bernardis") were
19 accountancy clients, beginning in 1993, of Respondent's accountancy partner, Joseph Gray.
20 After seeking Gray's advice regarding financial planning, Gray contacted them in December
21 1996 to put them in touch with Respondent for the purpose of discussing investing in real
22 estate.

23 h. Respondent represented to the Bernardis that he owned property in Orosi
24 worth \$415,000 and that he needed investment money to develop it. He represented that, for a
25

26 6. Respondent's signature on the Deed of Trust appears to have been notarized on March 17, 1995.

27 7. The deed of trust describes the property as Lot 1 yet the Construction Funding Account History prepared
by Respondent describes the property as Lot 12.

1 loan of \$60,000, the Bernardis would receive monthly interest-only payments of \$800 (16%
2 per annum) with the entire balance of accrued interest and principal to be paid on November 1,
3 1997. The loan was to be secured by the assignment of a loan and trust deed against the Orosi
4 property, executed by Cerrutti-Johnson Enterprises, Inc. in favor of Rufino and Virginia
5 Agcayab.

6 i. In or about January 1997, the Bernardis placed \$60,000 in the Orosi
7 property "investment" offered by Respondent. They were provided with documents (an un-
8 notarized Assignment of Deed of Trust and a Promissory Note with an attached parcel location
9 map for the Foothill Estates Subdivision, Orosi) to support their "investment." Respondent,
10 who had a fiduciary responsibility to the Bernardis, made the following representations:

11 (1) The Bernardis were told that the mere recording of an assignment
12 of a Promissory note ("the Agcayab note") and Deed of Trust would perfect title, protecting
13 them in case of a default, in which event they would assume ownership of the Orosi property;

14 (2) It was represented that the Agcayab note was "in place" and had
15 been recorded with the Tulare County Recorder; and

16 (3) Respondent represented that he would not jeopardize his
17 accountancy partnership by defaulting on the obligation.

18 j. Notwithstanding the foregoing representations, Respondent failed to:

19 (1) provide a commercially recognizable promissory note to reflect
20 his obligation to repay the loan;

21 (2) deliver a trust deed and note properly assigned (instead giving
22 them a mere "Assignment of Trust Deed");

23 (3) disclose that he did not own the Agcayab note and trust deed,
24 having assigned them four months earlier to another party;

25 (4) disclose that the promised 16% interest rate was usurious, and
26 thus illegal under California law (providing a defense Respondent would use in the event he
27 was sued for non-performance); and

1 (5) disclose that his financial ventures were already in a precarious
2 state as of the time of his offering this "investment."

3 k. Respondent communicated with the Bernardis on the letterhead of his
4 CPA partnership, Hill & Gray. He provided the Bernardis with an Assignment of Deed of
5 Trust dated and recorded January 29, 1997 which purported to assign his interest in a property
6 in which he had no actual interest.

7 l. Other than \$6,400 in "earnings" at \$800 per month pursuant to their
8 agreement with Respondent, the Bernardis have received no other return from their investment
9 and the principal has not been returned.

10 **INVESTOR R.B.**

11 m. Respondent was known to Robin B. as the CPA for her mother, J.F.,
12 for many years. Consequently, when her father-in-law, "investor R.B.," desired a safe
13 investment (he is aged and lives on a fixed income), Robin B. sought investment advice from
14 Respondent on behalf of her father-in-law. Respondent represented to Robin B. that he had an
15 investment pool in a municipal bond issuance from the City of Kingsburg which was paying
16 approximately 9%, tax free. He stated that, on a principal investment of approximately
17 \$20,000, her father-in-law would be provided with tax-free income of approximately \$146 per
18 month.

19 n. Investor R.B. invested \$19,833.79, payable to "Robert F. Hill Trust
20 Account" on or about January 27, 1997. Although Respondent represented that R.B. would
21 begin receiving his monthly checks at the end of February 1997, R.B. did not receive the
22 promised monthly income from his investment. When Robin B. inquired on behalf of her
23 father-in-law in July 1997, Respondent hand-delivered a check for nearly \$700 to R.B.

24 o. After becoming aware of problems with the "investment" from another
25 investor, Robin B. and her husband confronted Respondent. Respondent, who had a fiduciary
26 responsibility to R.B., admitted that there was no investment pool and no tax-free municipal
27 bond fund, as he had represented.

1 22. Pursuant to Respondent's admissions in testimony before Board representatives
2 at an investigative hearing on or about August 27, 1998, Respondent has been "holding out" as
3 a certified public accountant on a continuous basis for the last several years and has continued
4 to practice public accountancy after the expiration of his certified public accountant certificate
5 on April 1, 1998.

6 23. At the investigative hearing referenced in paragraph 22, Respondent testified
7 that he practiced as a licensed CPA partnership with Joseph Gray for approximately one year,
8 from November, 1996 through November 1997. As the partnership license was obtained from
9 the Board effective July 11, 1997, Respondent practiced as a licensed CPA partnership prior to
10 having obtained a partnership license

11 24. As supported by Respondent's testimony in the investigative hearing referenced
12 in paragraph 22, the continuing education attested to by Respondent for his prior renewal
13 period (April 1, 1996 to March 31, 1998) does not meet the requirements for licensure.
14 Respondent's verification at the time of renewal that he met the requirements was a false
15 statement. Respondent is unable to produce records to substantiate his completion of the
16 requisite continuing education and to support the renewal of his license which was based in
17 part upon his representation that the requisite amount of qualifying continuing education was
18 completed when in truth and in fact it was not.

19 **Findings in Aggravation of Penalty**

20 25. Respondent's conduct took advantage of positions of trust or confidence to
21 commit the offenses and that his conduct consisted of misrepresentations. There were several
22 unauthorized instances of both taking funds from his clients and using them as his own over a
23 substantial period of years. It is estimated that the total losses to victims (including many not
24 investigated by the Board) easily exceeds \$4,000,000 and will possibly mount as ongoing
25 investigations by federal and local authorities are concluded.

26 26. Respondent has blatantly disregarded the licensing requirements of the Board,
27 and, in representing himself as a duly licensed CPA, has seriously damaged the public trust:

1 because of his clients' reliance on his representation of valid licensure, he has both contributed
2 to and has compounded the damage caused to his clients. Further, his conduct toward his
3 clients violates the most fundamental principles of the profession's ethical standards.

4 5 DETERMINATION OF ISSUES

6 By reason of the foregoing Findings of Fact, Respondent is subject to disciplinary
7 action under Section 5100 of the Business and Professions Code based upon each of the
8 following determinations and each of them:

9 Fiscal Dishonesty - 5100(h)

10 27. Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal
11 dishonesty as follows:

12 Client B.M.

13 a. As set forth in Findings of Fact paragraphs 21a through 21a(1), as trustee of
14 the "Kemper Vista Group Bond Fund", Respondent:

15 (1) misrepresented the nature of the investment to his client;

16 (2) failed to maintain appropriate records, and act and account for his
17 actions as trustee, and further "paid himself" from trust funds which is contrary to appropriate
18 trust procedures;

19 (3) used the \$100,000 for his own benefit without the knowledge and
20 consent of his client;

21 (4) failed to return the \$100,000 principal to the trustor and retained the
22 \$100,000 for his own use and benefit; and/or

23 (5) failed to collect (after February 1997), on behalf of the trustor, the
24 interest payments due her.

25 b. Incorporating Findings of Fact paragraphs 21a, 21a(2), 21a(3), 21a(7)
26 and 21a(8), Respondent misrepresented nature of "investments" and "loans" and, relying on
27 B.M.'s trust and confidence, induced her to invest, used the funds for his own personal gain

1 and purposes, and failed to provide proper accounting for, and documentation of, said
2 "investments" and "loans."

3 c. Incorporating Findings of Fact paragraphs 21a and 21a(4), Respondent,
4 as the fiduciary during B.M.'s illness, took B.M.'s funds for his own purposes without
5 authorization.

6 d. Incorporating Findings of Fact paragraphs 21a, 21a(5) and 21a(6), ,
7 Respondent, as the tax preparer for B.M.:

8 (1) failed to prepare and/or file B.M.'s tax returns for three years;

9 (2) failed to pay taxes owing when the funds to do so had been provided
10 by his client at his request and upon his misrepresentation that he had already paid them.

11 **Client S.P.**

12 e. As established in Findings of Fact paragraphs 21b - 21f, Respondent
13 used S.P.'s investment for his own gain and purposes; created and provided false or
14 misleading documents related to her "investments"; gave her false information regarding the
15 tax consequences of her investment to protect his fraudulent scheme; misrepresented that her
16 investment was reinvested in a "bond fund"; and reassured her about the safety and viability of
17 her investment even after he had lost all her money.

18 **Investors Bernardis**

19 f. As established in Findings of Fact paragraphs 21g-21i, Respondent used
20 the Bernardis' investment for his own gain and purposes; created and provided false or
21 misleading documents and/or representations related to their "investment"; and solicited their
22 investment at a time when he knew of his own precarious financial situation.

23 **Investor R.B.**

24 g. As established in Findings of Fact paragraphs, 21m - 21o, Respondent
25 used R.B.'s investment for his own gain and purposes; lied about the nature of the investment;
26 provided false information regarding the nature and terms of the investment; was overextended
27 at best at the time of this solicitation for investment in a non-existent "bond fund"; and

1 reassured R. B. and his daughter-in-law by his statements and actions about the security and
2 viability of this investment.

3
4 **Breach of Fiduciary Responsibility - 5100(h)**

5 28. Respondent is subject to discipline pursuant to Code section 5100(h) in that his
6 conduct constitutes a breach of fiduciary responsibility as follows:

7 **Client B.M.**

8 a. As established in Findings of Fact paragraphs 21a through 21a(9),
9 Respondent breached his fiduciary responsibility to B.M.:

10 (1) as a fiduciary, with respect to each unauthorized withdrawal and
11 each consequent failure to properly discharge his duties as a fiduciary, and failure to reimburse
12 his client;

13 (2) as a trustee, with respect to his failure to properly discharge his
14 duties as a trustee;

15 (3) as a tax preparer, for his failure, in three tax years, to prepare
16 and file his client's tax returns, and for his failure to pay her taxes for the tax year 1995
17 (having misrepresented that he did so). This conduct resulted in the violation of applicable tax
18 laws to the detriment of his clients; and

19 (4) as a financial advisor, in view of his lack of independence and
20 objectivity and in view of his conflict of interest.

21 **Client S.P.**

22 b.. As established in Findings of Fact paragraphs 21b-21f, Respondent used
23 S.P.'s investment for his own gain and purposes; created and provided false or misleading
24 documents related to her "investments"; gave her false information regarding the tax
25 consequences of her investment to protect his fraudulent scheme; misrepresented that her
26 investment was reinvested in a "bond fund"; and reassured her about the safety and viability of
27 her investment even after he had lost all her money.

1 **Investors Bernardis**

2 c. As established in Findings of Fact paragraphs 21g - 21i, Respondent
3 used the Bernardis' investment for his own gain and purposes; created and provided false or
4 misleading documents and/or representations related to their "investment"; and solicited their
5 investment at a time when he knew of his own precarious financial situation.

6 **Investor R.B.**

7 d. As established in Findings of Fact paragraphs 21m - 21o, Respondent
8 used R.B.'s investment for his own gain and purposes; lied about the nature of the investment;
9 provided false information regarding the nature and terms of the investment; was overextended
10 at best at the time of this solicitation for investment in a non-existent "bond fund"; and
11 reassured R. B. and his daughter-in-law by his statements and actions about the security and
12 viability of this investment.

13
14 **Dishonesty, Fraud and/or Gross Negligence - 5100(c)**

15 **Dishonesty**

16 29. Respondent is subject to discipline pursuant to Code section 5100(c) for dishonesty
17 in the practice of public accountancy as follows:

18 **Client B.M.**

19 a. He misrepresented the nature of the investment set forth in Findings of
20 Fact paragraph 21a(2); and

21 b. He took, as set forth in Findings of Fact paragraphs 21a through 21a(8),
22 without authorization and for his own benefit, funds from his client's accounts, in violation of
23 the purpose of the trust and/or loans and/or investments and/or fiduciary arrangement or
24 relationship and failed to file tax returns.

25 **Client S.P.**

26 c. He misrepresented the nature of the investment with regard to its tax
27 consequences;

1 d. He failed to insist upon appropriate documentation; and

2 e. He failed to properly prepare S.P.'s tax return.

3 **Fraud**

4 30. Respondent is subject to discipline pursuant to Code section 5100(c) for fraud in
5 the practice of public accountancy as follows:

6 **Client B.M.**

7 a. As established in Findings of Fact paragraphs 21a through 21a(9),
8 Respondent obtained funds from his client by fraudulent means, and deposited and/or used the
9 funds for his own purposes and benefit.

10 **Client S.P.**

11 b. As established in Findings of Fact paragraphs 21b through 21f:
12 (1) He obtained funds from his client by fraudulent means and
13 misrepresentations;
14 (2) He deposited and/or used the funds for his own purposes and
15 benefit; and
16 (3) He provided improper tax advice, serving to mask and further his
17 own fraudulent practices.

18 **Investors Bernardis**

19 c. As established in Findings of Fact paragraphs 21g through 21i,
20 Respondent is subject to discipline pursuant to Code section 5100(c) in that his conduct
21 constitutes dishonesty and/or fraud in the practice of public accountancy in that he obtained
22 funds from the Bernardis by fraudulent means and misrepresentations--cloaked in the
23 respectability of the CPA partnership--and deposited and/or used the funds for his own
24 purposes and benefit.

25 **Investor R.B.**

26 d. As established in Findings of Fact paragraphs 21m through 21o,
27 respondent obtained funds from R.B. by fraudulent means and misrepresentations, relying on

1 his reputation as a CPA, and that, contrary to his representations, he deposited and/or used the
2 funds for his own purposes and benefit.

3 **Gross Negligence**

4 31. Respondent is subject to discipline pursuant to Code section 5100(c) for gross
5 negligence in the practice of public accountancy in that, in violation of applicable tax laws and
6 to the detriment of his clients:

7 **Client B.M.**

8 a. As established in Findings of Fact paragraphs 21a, 21a(5), and 21a(6):

9 (1) He failed to prepare and/or file B.M.'s tax returns for three
10 years; and

11 (2) He failed to pay taxes owing when the funds to do so had been
12 provided by his client at his request and upon his misrepresentation that he had already paid
13 them.

14 **Client S.P.**

15 b. As established in Findings of Fact paragraphs 21b through 21f,
16 Respondent failed to advise S.P. regarding tax consequences and accounting to the detriment
17 of his clients, in violation of applicable standards of practice.

18
19 **Embezzlement, Theft, Misappropriation of Funds and/or**
20 **Obtaining Money by Fraudulent Means or False Pretenses - 5100(j)**

21 32. Respondent is subject to discipline pursuant to Code section 5100(j) in that his
22 conduct constitutes multiple instances of embezzlement, theft, misappropriation of funds,
23 and/or obtaining money by fraudulent means or false pretenses as follows:

24 **Client B.M.**

25 a. As established in Findings of Fact paragraph 21a(1), Respondent
26 engaged in unauthorized and illegal use of the funds illegally withdrawn from the "trust"

27
///

1 account for his own purposes in violation of the "trust" and/or without the knowledge and
2 consent of his client;

3 b. As established in Findings of Fact paragraph 21a(4), Respondent
4 engaged in unauthorized and illegal use, during his client's illness and having been entrusted
5 as her fiduciary, of the funds illegally withdrawn from the checking account for his own
6 purposes in violation of his fiduciary responsibilities and without the knowledge and consent of
7 his client; and

8 c. In multiple instances, Respondent obtained funds by fraudulent means or
9 false pretenses with respect to alleged "loans" or "investments" (see Findings of Fact
10 paragraphs 21a through 21a(8)).

11 **Client S.P.**

12 d. As established in Findings of Fact paragraphs 21b through 21f,
13 Respondent's conduct constitutes the misappropriation of his client S.P.'s monies for his own
14 use, having provided continued but false oral and documentary assurance that the investment
15 was safe and secured.

16 **Investors Bernardis**

17 e. As established in Findings of Fact paragraphs 21g through 21i,
18 Respondent's conduct constitutes the misappropriation of the Bernardis monies for his own
19 use, having provided continued, but false, oral and documentary assurance that the investment
20 was sound and secured.

21 **Investor R.B.**

22 f. As established in Findings of Fact paragraphs 21m through 21o,
23 Respondent's conduct constitutes the misappropriation of R.B.'s monies for his own use,
24 having provided false assurance regarding the nature of the investment.

25 ///

26 ///

27 ///

1 **Knowing Preparation, Publication or Dissemination of**
2 **False, Fraudulent or Materially Misleading**
3 **Financial Reports or Information - 5100(i)**

4 33. Respondent is subject to discipline for each reason stated below pursuant to
5 Code section 5100(i) as follows:

6 **Client S.P.**

7 a. As set forth in Findings of Fact paragraphs 21b, 21d and 21e,
8 Respondent prepared and gave to S.P. each and all of the following:

- 9 (1) the promissory note;
10 (2) the Deed of Trust; and
11 (3) the S___ P___ Construction Funding Account Balance Recap.

12 **Investors Bernardis**

13 b. As established in Findings of Fact paragraphs 21h through 21k,
14 Respondent prepared and gave to the Bernardis each and all of the following:

- 15 (1) the Assignment of Deed of Trust;
16 (2) the Promissory Note; and
17 (3) the attached Parcel Location Map in the Foothill Estates
18

19 Subdivision, Orosi.

20 **Investor R.B.**

21 c. As established in Findings of Fact paragraphs 21m through 21o,
22 Respondent published false and fraudulent financial information to Robin B. and to her father-
23 in-law regarding the nature and terms of the investment.

24 **Unprofessional Conduct**

25 34. Incorporating by reference all of the Findings of Fact with respect to victims
26 B.M., S.P., the Bernardis, and R.B. Respondent has wilfully engaged in conduct which
27 violates the professional code of conduct, rules applicable to representing clients before taxing

1 authorities, and the standard of practice with respect to practice as a CPA, particularly in his
2 capacity representing, acting on behalf of, or providing services to, clients as a licensed CPA,
3 in violation of Code section 5100, Board Rule 57 (prohibiting conflicts of interest) and
4 applicable professional standards, and cause for discipline has thereby been established.

5 **Unauthorized Practice**

6 **Practice Without a Valid Permit**

7 35. As established in Findings of Fact paragraph 22, is subject to discipline for
8 unprofessional conduct under Code section 5100(f) in conjunction with Code sections 5050,
9 5051, and 5121 for unlicensed practice based upon his continuous practice of public
10 accountancy after the expiration of his certified public accountant certificate on April 1, 1998.

11 36. As established in Findings of Fact paragraph 23, Respondent is subject to
12 disciplinary action pursuant to Code section 5100(f) in conjunction with Code section 5050 for
13 practicing as a licensed CPA partnership prior to having obtained a partnership license from
14 the Board.

15 **Practice In Violation of Continuing Education Requirements**


16 37. As established in Findings of Fact paragraph 24, Respondent is subject to
17 disciplinary action pursuant to Code section 5100(f) in conjunction with Board Rules 87, 89
18 and 94 in that the continuing education attested to by Respondent for his prior renewal period
19 (April 1, 1996 to March 31, 1998) does not meet the requirements for licensure.

20 38. Under each of the foregoing Determination of Issues, based upon the Findings
21 of Fact, cause for disciplinary action by way of revocation of licensure has been established,
22 separately and severally.

23 39. Each of the factors in the Findings of Fact paragraphs 25 and 26 has been
24 considered and constitutes a factor in aggravation of penalty and provides further support for
25 the imposition of the penalty of revocation of licensure.

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Pursuant to California Government Code section 11520(b), Respondent is entitled to make any showing by way of mitigation; however, such showing must be made in writing to the Board of Accountancy, 2000 Evergreen Street, Suite 250, Sacramento, California 95815, prior to the effective date of this decision.


President
Board of Accountancy
Department of Consumer Affairs

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JOEL S. PRIMES
Supervising Deputy Attorney General
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BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBERT F. HILL
2230 W. Sunnyside Suite 6
Visalia, CA 93277

Certified Public Accountant
Certificate No. CPA 32900,

Respondent.

NO. AC-99-6

ACCUSATION

Complainant Carol B. Sigmann, as cause for disciplinary action, alleges:

1. Complainant is the Executive Officer of the California Board of Accountancy ("Board") and makes and files this accusation solely in her official capacity.

LICENSE INFORMATION

2. On or about October 2, 1981, Certified Public Accountant Certificate No. CPA 32900 was issued by the Board to Robert F. Hill ("Respondent"). The certificate, which is required to be renewed every two years,¹ was last renewed on or about April 27,

1. See Business and Professions Code section 5070.5.

1 1996, for a two-year period, based in part upon Respondent's certification that he met the
2 applicable requirements for continuing education. The certificate subsequently expired April
3 1, 1998 and has not been renewed.

4 STATUTES AND REGULATIONS

5 3. At all times material herein, section 5100 of the California Business
6 and Professions Code (hereinafter "Code") has provided in pertinent part that "(a)fter notice
7 and hearing, the Board may revoke, suspend or refuse to renew any permit or certificate"
8 issued by the Board for unprofessional conduct, including but not limited to:

9 5100 (c) Dishonesty, fraud, or gross negligence in the practice of public
10 accountancy.

11 5100 (f) Willful violation of the Accountancy Act or any rule or regulation
12 promulgated by the board.

13 5100 (h) Fiscal dishonesty or breach of fiduciary responsibility of any kind;

14 5100 (i) Knowing preparation, publication or dissemination of false, fraudulent,
15 or materially misleading financial statements, reports, or information.

16 5100 (j) Embezzlement, theft, misappropriation of funds or property, or
17 obtaining money, property or other valuable consideration by fraudulent
18 means or false pretenses.

19 4. Code Section 5050 provides that no person shall engage in the practice
20 of public accountancy in California unless the person holds a valid permit to practice public
21 accountancy issued by the Board. Code Section 5051 sets forth the definition of "public
22 accountancy" and includes in said definition any of the following: holding out to the public
23 as skilled, qualified and ready to render professional service as a public accountant for
24 compensation; maintaining an office for the transaction of business as a public accountant;
25 and offering to prospective clients to perform, for compensation, defined professional
26 services. Code section 5051(h) provides that, when "holding out," a person is engaged in
27 the practice of public accountancy when preparing personal financial or investment plans or

1 providing to clients products or services of others in implementation of personal financial or
2 investment plans.

3 5. Code section 5121 provides that certain displays and utterances
4 involving the words "certified public accountant" are prima facie evidence of "holding out"
5 as a certified public accountant holding a valid certificate to practice accountancy in
6 California.

7 6. Code section 5070.5 provides in pertinent part that certificates, which
8 are issued for a period of two years, expire on the last day of the month of the legal birthday
9 of the licensee if not renewed, and further provides that, in order to renew the license, the
10 licensee must apply on the required form, pay a renewal fee, and provide evidence to the
11 Board of compliance with continuing education provisions.

12 7. The Board's regulations are codified in Title 16 of the California Code
13 of Regulations, sections 1-99.^{2/} Board Rule 94 provides that the failure of a licensee
14 engaged in public practice to comply with applicable continuing education rules constitutes
15 cause for disciplinary action.

16 8. Board Rule 87(a) requires that a licensee complete at least 80 hours of
17 qualifying continuing education during every two-year period immediately preceding permit
18 renewal. Board Rule 89(a) requires the submission of a signed statement, under penalty of
19 perjury, that all applicable continuing education requirements have been met.

20 9. Board Rule 89(g) provides, with regard to continuing education, that a
21 licensee's willful making of any false or misleading statement, in writing regarding his or her
22 continuing education shall constitute cause for disciplinary action pursuant to section 5100(f)
23 of the Accountancy Act.

24 10. Board Rule 57 provides that a licensee shall not concurrently engage in
25 the practice of public accountancy and in any other business or occupation which impairs the
26

27 2. The Board's rules, codified at Title 16 of the California Code of Regulations in sections 1-99, are
hereinafter referred to as "Board Rule." Thus, for example, 16 C.C.R. section 87(a) is Board Rule 87(a).

1 licensee's independence, objectivity, or creates a conflict of interest in rendering professional
2 services.

3 11. Board Rule 58 requires that a licensee engaged in the practice of public
4 accountancy comply with all applicable professional standards.

5 12. Applicable standards of practice pertinent to this accusation include,
6 without limitation, the following sections of U.S. Department of Treasury Circular 230
7 (regulations governing practice before the Treasury Department):

8 a. Section 10.22 requires that an individual practicing before the Internal
9 Revenue Service exercise "due diligence" in the following three areas:

10 (a) preparing, assisting, approving and/or filing returns and other
11 documents with the Service;

12 (b) determining the correctness of oral and written representations
13 made by the practitioner to the Department of the Treasury;

14 (c) determining the correctness of the oral and written
15 representations made by the practitioner to clients with reference to any
16 matter administered by the Internal Revenue Service.

17 b. Section 10.23 requires the disposition, by a certified public accountant,
18 of any matter before the IRS without unreasonable delay.

19 13. The AICPA *Code of Professional Conduct* consists, *inter alia*, of
20 Section I-Principles and Section II-Rules. The Principles are contained in six articles,
21 relevant herein:

22 Article I (Responsibilities);
23 Article II (The Public Interest);
24 Article III (Integrity);
25 Article IV (Objectivity and Independence);
26 Article V (Due Care); and
27 Article VI (Scope and Nature of Services).

26 ///

27 ///

1 Relevant herein, without limitation, from Section II-Rules are:

2 Rule 102 (Integrity and Objectivity): "In the performance of any professional
3 service, a member shall maintain objectivity and integrity, shall be free of
4 conflicts of interest, and shall not knowingly misrepresent facts or subordinate
his or her judgment to others."

5 14. Code section 5107 provides that in any Order issued in the resolution of
6 a disciplinary proceeding before the Board, the Executive Officer of the Board may request
7 the Administrative Law Judge to direct the certificate holder in violation of Code sections
8 5100(c), (i), (j) or the fiscal dishonesty provisions of section 5100(h) to pay to the Board a
9 sum not to exceed the actual and reasonable costs of the investigation and prosecution of the
10 matter, including attorney's fees.

11 15. Pursuant to Code section 118(b), the suspension, expiration, or
12 forfeiture by operation of law of a license issued by the Board shall not, during any period in
13 which it may be renewed, restored, reissued, or reinstated, deprive the Board of its authority
14 to institute or continue a disciplinary proceeding against the licensee upon any ground
15 provided by law or to enter an order suspending or revoking the license or otherwise taking
16 disciplinary action against the licensee on any such ground. Code section 5070.6 provides
17 that an expired permit may be renewed at any time within five years after its expiration upon
18 compliance with certain requirements.

19 CAUSES FOR DISCIPLINE

20 CLIENT B.M.

21 16. Among the clients of Respondent's accountancy practice was Mrs.
22 B.M. (hereinafter "B.M."), who considered Respondent's mother one of her best friends and
23 who has known Respondent since his birth. After the death of her husband in April 1989,
24 B.M. "turned to Mr. Hill for help." Over a period of years, as set forth below, Respondent
25 engaged in a course of unprofessional conduct vis-à-vis his client of many years, with whose
26 financial affairs he was entrusted and was intimately familiar.

27

1 17. In July 1989, B.M. gave Respondent \$100,000 to be invested.^{3/}
2 Respondent represented that he invested B.M.'s funds in the "Kemper Vista Group Bond
3 Fund." He was appointed trustee of the "subscribed investment," a purported mutual fund,
4 and, as trustee, was authorized to receive information concerning such investment; to
5 complete the deposit of monies held in trust for the subscriber; and to receive earnings
6 information on a monthly and annual basis. B.M. was provided a copy of a Subscription
7 Agreement and Power of Attorney for the "subscribed investment." However, B.M.'s funds
8 were used by Respondent to finance real estate enterprises with which Respondent was
9 affiliated as a partner or owner^{4/} (see paragraph 18). B.M. was essentially an unsecured
10 lender in Respondent's venture, the development of real estate subdivisions.

11 B.M. received \$1,000 per month through February 1997, at which point the
12 payments stopped. The \$100,000 investment has not been recovered.

13 18. In or about December 1992, Respondent asked B.M. for \$75,000 to
14 invest in "Kingsburg Municipal Bonds." There were no such bonds; in truth, Respondent, as
15 a principal in several under-capitalized real estate development schemes (Silver Brook Estates
16 in Kingsburg; Willow Springs in Coalinga; Dinuba, Selma and Foothill Estates in Orosi),
17 misappropriated the funds to further his own financial goals. These "investments" were not
18 secured by second trust deeds. B.M. did not recover any of these funds nor did she realize
19 any "investment" return.

20 19. In or about July 1993, at Respondent's request, B.M. loaned
21 Respondent funds, writing a check to him for \$35,000. He failed to repay this (unsecured)
22 loan. The terms of this loan are not evidenced by a writing.

23 20. In or about November 1994, B.M. became seriously ill and was
24

25 3. Respondent, who provided extensive services to B.M. including the preparation of tax returns, tax
26 advice, financial planning, and estate planning, was made aware by B.M. of her desires regarding the devisees
of her estate and undertook to assist her investing to achieve certain testamentary and other goals.

27 4. Respondent held a real estate broker's license during a period known to respondent but not to
complainant. The license reportedly expired in October 1995.

1 hospitalized for 63 days. She required a lengthy period of convalescence. B.M. requested
2 that Respondent "pay her bills" and deposit checks during her illness and convalescence (in
3 essence, that he assist her in conducting her affairs while she was incapacitated). Although
4 authorized, as her fiduciary, to write checks on her account for the above-stated purpose,
5 beginning in or about January 1995, Respondent wrote the following unauthorized checks on
6 one of B.M.'s checking accounts:

8	<u>Check No.</u>	<u>Check Amount</u>	<u>Check Date</u>	<u>Payee</u>
9	1011	\$20,000	01/10/95	Michael Phillips
10	1013	\$35,000	02/03/95	Terra West Real Estate ^{5/}
11	1014	\$ 8,500	02/09/95	Terra West Real Estate
12	1015	\$ 5,000	02/13/95	Terra West Real Estate
13	1017	<u>\$ 4,005</u>	02/18/95	Union Bank ^{6/}
14	TOTAL	\$72,505		

15 Respondent wrote these checks for his own personal gain and without B.M.'s
16 knowledge or consent. These funds were not recovered.

17 21. In 1996, Respondent was engaged (as usual) to prepare B. M.'s tax
18 return for the previous tax year (1995). Respondent prepared the returns but failed to file
19 them (nor did he provide a completed file copy to B.M.). However, Respondent showed
20 B.M. copies of checks he falsely represented that he had written to the taxing authorities in
21 payment of B.M.'s tax liability, and requested that she reimburse him. He obtained two
22 payments from B.M., in the amounts of \$20,681 (dated 4-15-96) and \$25,669 (dated 6-7-96).
23 The checks were made out to Respondent at his request, and were deposited by him. The
24

25 5. This entity is connected with Respondent's real estate development enterprises. The notation on these
26 checks drafted to Terra West Real Estate was "loan."

27 6. Respondent purchased a Cashier's Check with this check. It is not known for what personal purpose
Respondent used this cashier's check.

1 payments were never made by Respondent to the taxing authorities, nor did he file the
2 returns. These funds have not been recovered by B.M.

3 22. In or about June 1995, Respondent requested, and received, from B.M.
4 a check in the amount of \$4,950. Respondent misrepresented the purpose for this payment
5 and used the funds for his own purposes. He did not provide an accounting or other
6 documentation to B.M. regarding the purpose of the check.

7 23. In or about September 1996, Respondent requested and received two
8 loans from B.M. in the amounts of \$15,000 each. Respondent provided a note for one of
9 these loans which he tore up upon presenting B.M. with his personal check in the amount of
10 \$15,000 plus interest. The check "bounced." Consequently, B.M. was not repaid either of
11 these "loans."^{7/}

12 24. The total funds misappropriated by Respondent from B.M. totals at
13 least \$363,805.^{8/} This figure does not include any tax penalties or interest, nor loss of
14 interest or other income.

15 25. In addition to the tax matter for the tax year 1995 referenced in
16 paragraph 21 above, Respondent was also engaged to prepare and file tax returns for the
17 1994 and 1996 tax years for B.M. He led B.M. to believe he had filed them but failed to do
18 so.

19 26. Throughout the course of the transactions described above, Respondent
20 kept most documentation which existed regarding the various transactions, and refused to
21 provide B.M. with said documentation, even after admitting to her in September 1997, that
22 he made misrepresentations to her and that he could not return her money or purported
23

24
25 7. Shortly after this, in February 1997, payments from B. M.'s initial "investment" ceased (see paragraph
18 above), and B.M. had the first indication that Respondent was exploiting her.

26 8. At least \$72,505 was misappropriated, as set forth in paragraph 20, by Respondent's writing checks
27 for his own purposes; at least \$291,300 was misappropriated, as set forth herein, through his obtaining funds
for his own purposes from B.M. through misrepresenting that the funds were for investments, loans, or to pay
income taxes which were never paid.

1 investments.

2 Fiscal Dishonesty - 5100(h)

3 27. Incorporating by reference the matters asserted in paragraph 16, it is
4 alleged that the relationship between Respondent and his client B.M. was of a fiduciary
5 nature.

6 28. Incorporating herein the matters set forth in paragraphs 16 and 17,
7 Respondent is subject to discipline pursuant to Code section 5100(h) in that his conduct as
8 trustee of the "Kemper Vista Group Bond Fund" constitutes fiscal dishonesty:

- 9 a. He misrepresented the nature of the investment to his client;
10 b. He failed to maintain appropriate records, and act and account for his
11 actions as trustee, and further "paid himself" from trust funds which is contrary to
12 appropriate trust procedures;
13 c. He used the \$100,000 for his own benefit without the knowledge and
14 consent of his client;
15 d. He failed to return the \$100,000 principal to the trustor and retained
16 the \$100,000 for his own use and benefit; and/or
17 e. He failed to collect (after February 1997), on behalf of the trustor, the
18 interest payments due her.

19 29. Incorporating herein the matters set forth in paragraphs 16, 18, 19, 22,
20 23 and 25, Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal
21 dishonesty in that he misrepresented nature of "investments" and "loans" and, relying on
22 B.M.'s trust and confidence, induced her to invest, used the funds for his own personal gain
23 and purposes, and failed to provide proper accounting for, and documentation of, said
24 "investments" and "loans."

25 30. Incorporating herein the matters set forth in paragraphs 16 and 20,
26 Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal dishonesty in
27 that his conduct as the fiduciary during B.M.'s illness in that his unauthorized taking of

1 funds for his own purposes constitutes fiscal dishonesty.

2 31. Incorporating herein the matters set forth in paragraphs 16, 21 and 25,
3 Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal dishonesty in
4 that, as the tax preparer, in violation of applicable tax laws and to the detriment of his client:

- 5 a. He failed to prepare and/or file B.M.'s tax returns for three years;
6 b. He failed to pay taxes owing when the funds to do so had been
7 provided by his client at his request and upon his misrepresentation that he had already paid
8 them.

9 Breach of Fiduciary Responsibility - 5100(h)

10 32. Incorporating herein the matters set forth in paragraphs 16 through 26,
11 Respondent is subject to discipline pursuant to Code section 5100(h) in that his conduct
12 constitutes the breach of his fiduciary responsibility, including but not limited to his conduct:

- 13 a. as a fiduciary, with respect to each unauthorized withdrawal and each
14 consequent failure to properly discharge his duties as a fiduciary, and failure to reimburse his
15 client;
16 b. as a trustee, with respect to his failure to properly discharge his duties
17 as a trustee;
18 c. as a tax preparer, for his failure, in three tax years, to prepare and file
19 his client's tax returns, and for his failure to pay her taxes for the tax year 1995 (having
20 misrepresented that he did so). This conduct resulted in the violation of applicable tax laws
21 to the detriment of his clients; and
22 d. as a financial advisor, in view of his lack of independence and
23 objectivity and in view of his conflict of interest.

24 Dishonesty, Fraud and/or Gross Negligence - 5100(c)

25 33. Incorporating herein the matters set forth in paragraphs 16 and 17,
26 Respondent is subject to discipline pursuant to Code section 5100(c) for dishonesty in the
27 practice of public accountancy in that:

1 a. He misrepresented the nature of the investment set forth in paragraph
2 17; and

3 b. He took, as set forth in paragraphs 16 through 24, without
4 authorization and for his own benefit, funds from his client's accounts, in violation of the
5 purpose of the trust and/or loans and/or investments and/or fiduciary arrangement or
6 relationship.

7 34. Incorporating herein the matters set forth in paragraphs 16 through 26,
8 Respondent is subject to discipline pursuant to Code section 5100(c) for fraud in the practice
9 of public accountancy in that he obtained funds from his client by fraudulent means, and
10 deposited and/or used the funds for his own purposes and benefit.

11 35. Incorporating herein the matters set forth in paragraphs 16, 21, 24 and
12 25, Respondent is subject to discipline pursuant to Code section 5100(c) for gross negligence
13 in the practice of public accountancy in that, in violation of applicable tax laws and to the
14 detriment of his clients:

15 a. He failed to prepare and/or file B.M.'s tax returns for three years; and

16 b. He failed to pay taxes owing when the funds to do so had been
17 provided by his client at his request and upon his misrepresentation that he had already paid
18 them.

19 Embezzlement, Theft, Misappropriation of Funds and/or
20 Obtaining Money by Fraudulent Means or False Pretenses - 5100(j)

21 36. Incorporating herein the matters set forth in paragraphs 16 through 24,
22 Respondent is subject to discipline pursuant to Code section 5100(j) in that his conduct
23 constitutes multiple instances of embezzlement, theft, misappropriation of funds, and/or
24 obtaining money by fraudulent means or false pretenses with respect to his:

25 a. unauthorized and illegal use, on dates known to Respondent but not to
26 complainant, of the funds illegally withdrawn from the "trust" account for his own purposes
27 in violation of the "trust" and/or without the knowledge and consent of his client (see

1 paragraph 16);

2 b. unauthorized and illegal use, during his client's illness and having been
3 entrusted as her fiduciary, of the funds illegally withdrawn from the checking account for his
4 own purposes in violation of his fiduciary responsibilities and without the knowledge and
5 consent of his client (see paragraph 20); and

6 c. multiple instances of obtaining funds by fraudulent means or false
7 pretenses with respect to alleged "loans" or "investments" (see paragraphs 16 through 24).

8 CLIENT S.P.

9 37. Respondent performed accounting services for S. P. for several years
10 (the exact time period is known to Respondent but not to complainant). S.P. subsequently
11 became an "investor" in Respondent's real estate development enterprises, specifically
12 making construction loans in housing developments in Coalinga and Dinuba (see paragraph
13 18 above). S.P. loaned \$15,000 in July 1993, \$20,000 in October 1993,^{9/} and \$4,000 in
14 January 1994 to Willow Springs Developers, Inc., of which Respondent was President and
15 sole owner. Respondent provided her with a "Construction Funding Account Balance Recap"
16 which led her to believe that her investment was viable. Respondent's only "withdrawals"
17 from the account amounted to \$5,699.76 (in March 1995, January 1996, and November
18 1996). Otherwise, her capital investment, accrued interest, and "earnings" have not been
19 repaid, and, as of Respondent's March 1997 accounting, totalled \$47,086.92.

20 38. Respondent prepared S.P.'s tax returns. She raised the issue of
21 whether a Form 1099 was necessary, or whether income from the investment needed to be
22 reported. Respondent advised her that this type of investment does not need to be reported.

23 39. Concerned about the security of her investment, S.P. requested some
24 assurance from Respondent. In response to S.P.'s concerns, Respondent drove her around
25

26 9. This is the only investment of the three for which S.P. received a "deposit receipt," which provided
27 that she would earn a 4% fee for a period of 75 days from date of deposit, and that principal and fees earned
would be subject to reinvestment at her direction upon maturity.

1 the subdivision, made representations regarding the value of the lots being developed, and
2 chose a lot to serve as "security" for her investment. He provided S.P. a promissory note
3 dated October 2, 1994, which promised to pay on demand \$45,824, and "unconditionally
4 guaranteed" all the obligations of the promissory note. The note indicates that the loan is
5 secured by a deed of trust.

6 40. Respondent provided S.P. with a deed of trust which was prepared on
7 October 2, 1994,^{10/} and requested that she not record it.^{11/} S.P. subsequently learned that
8 the property ostensibly securing the note was sold shortly after Respondent provided her with
9 these documents.

10 41. S.P. requested the return of her money in 1997 and was informed by
11 Respondent that it was invested in "bank treasuries" which was not an investment authorized
12 by S.P. Subsequently, in or about July 1997, S.P. requested to be "cashed out" of her
13 "construction fund account." Respondent subsequently informed S.P. that her money had
14 been lost "in the first year" when the "sub-division went broke."

15 Fiscal Dishonesty and/or Breach of Fiduciary Responsibility - 5100(h)

16 42. Incorporating by reference the matters asserted in paragraphs 37
17 through 41, Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal
18 dishonesty in that he used S.P.'s investment for his own gain and purposes; created and
19 provided false or misleading documents related to her "investments"; gave her false
20 information regarding the tax consequences of her investment to protect his fraudulent
21 scheme; misrepresented that her investment was reinvested in a "bond fund"; and reassured
22 her about the safety and viability of her investment even after he had lost all her money.

23 Dishonesty, Fraud and/or Gross Negligence - 5100(c)

24 43. Incorporating herein the matters set forth in paragraphs 37 and 38,
25

26 10. Respondent's signature on the Deed of Trust appears to have been notarized on March 17, 1995.

27 11. The deed of trust describes the property as Lot 1 yet the Construction Funding Account History
prepared by Respondent describes the property as Lot 12.

Respondent is subject to discipline pursuant to Code section 5100(c). His conduct constitutes dishonesty in the practice of public accountancy in that:

a. He misrepresented the nature of the investment with regard to its tax consequences;

b. He failed to insist upon appropriate documentation^{12/}; and

c. He failed to properly prepare her tax return.

44. Incorporating herein the matters set forth in paragraphs 37 through 41, Respondent is subject to discipline for fraud in the practice of public accountancy pursuant to Code section 5100(c) in that:

a. He obtained funds from his client by fraudulent means and misrepresentations;

b. He deposited and/or used the funds for his own purposes and benefit; and

c. He provided improper tax advice, serving to mask and further his own fraudulent practices.

45. Incorporating herein the matters set forth in paragraphs 37 through 41, Respondent is subject to discipline pursuant to Code section 5100(c) for gross negligence in the practice of public accountancy in that he, in violation of his duties to advise S.P. regarding tax consequences and accounting to the detriment of his clients, in violation of applicable standards of practice.

Embezzlement, Theft, Misappropriation of Funds and/or
Obtaining Money by Fraudulent Means or False Pretenses - 5100(j)

46. Incorporating herein the matters set forth in paragraphs 37 through 41, Respondent is subject to discipline pursuant to Code section 5100(j) for embezzlement, theft, misappropriation of funds, and/or obtaining money by fraudulent means or false pretenses

12. Respondent, as Robert Hill, CPA and tax preparer, should have obtained documentation from the client regarding the investment; however, he advised her that it was unnecessary.

1 with respect to each purported investment of capital, earnings and interest, in that his conduct
2 constitutes the unauthorized taking of his client's monies for his own use, having provided
3 continued but false oral and documentary assurance that the investment was safe and secured.

4 Knowing Preparation, Publication or Dissemination of
5 False, Fraudulent or Materially Misleading
6 Financial Reports or Information - 5100(i)

7 47. Incorporating herein the matters set forth in paragraphs 37 through 41,
8 Respondent is subject to discipline for each reason stated below pursuant to Code section
9 5100(i) in that he prepared and gave to S.P. each and all of the following:

- 10 a. the promissory note;
11 b. the Deed of Trust; and
12 c. the S___ P___ Construction Funding Account Balance Recap.

13 INVESTORS FRANCO AND MERRY BERNARDI

14 48. Mr. and Mrs. Franco Bernardi (hereinafter "the Bernardis") were
15 accountancy clients, beginning in 1993, of Respondent's (accountancy) partner, Joseph
16 Gray.^{13/} They eventually sought Gray's advice regarding financial planning, *e.g.*, tax
17 saving strategies and/or investments. Gray contacted them in December 1996 to put them in
18 touch with Respondent for the purpose of discussing investing in real estate.

19 49. Respondent represented to the Bernardis that he owned property in
20 Orosi (see paragraph 18) worth \$415,000 and that he needed investment money to develop it.
21 He represented that, for a loan of \$60,000, the Bernardis would receive monthly interest-only
22 payments of \$800 (16% per annum) with the entire balance of accrued interest and principal
23 to be paid on November 1, 1997. The loan was to be secured by the assignment of a loan
24 and trust deed against the Orosi property, executed by Cerrutti-Johnson Enterprises, Inc. in
25 favor of Rufino and Virginia Agcayab.

26 13. According to Respondent, Hill and Gray practiced as a CPA partnership for approximately one year,
27 from November 1996 to November 1997. They obtained a partnership license from the Board effective July 11,
1997.

1 50. In or about January 1997, the Bernardis placed \$60,000 in the Orosi
2 property "investment" offered by Respondent. They were provided with documents (an un-
3 notarized Assignment of Deed of Trust and a Promissory Note with an attached parcel
4 location map for the Foothill Estates Subdivision, Orosi) to support their "investment." The
5 following representations were made by Respondent:

6 a. The Bernardis were told that the mere recordation of an assignment of
7 a Promissory note ("the Agcayab note") and Deed of Trust would perfect title, protecting
8 them in case of a default, in which event they would assume ownership of the Orosi
9 property;

10 b. It was further represented that the Agcayab note was "in place" and had
11 been recorded with the Tulare County Recorder; and

12 c. It was further represented by Respondent that he would not jeopardize
13 his accountancy partnership by defaulting on the obligation.

14 51. Notwithstanding the foregoing representations, Respondent failed to:

15 a. provide a commercially recognizable promissory note to reflect his
16 obligation to repay the loan;

17 b. deliver a trust deed and note properly assigned (instead giving them a
18 mere "Assignment of Trust Deed");

19 c. disclose that he did not own the Agcayab note and trust deed, having
20 assigned them four months earlier to another party;

21 d. disclose that the promised 16% interest rate was usurious, and thus
22 illegal under California law (providing a defense Respondent would use in the event he was
23 sued for non-performance); and

24 e. disclose that his financial ventures were already in a precarious state as
25 of the time of his offering this "investment."

26 52. Respondent communicated with the Bernardis on the letterhead of his
27 CPA partnership, Hill & Gray. He provided the Bernardis with an Assignment of Deed of

1 Trust dated and recorded January 29, 1997 which purported to assign his interest in a
2 property in which he in fact had no interest.

3 53. The Bernardis received \$6,400 in "earnings" at \$800 per month
4 pursuant to their agreement with Respondent. They have received no other return from their
5 investment and the principal has not been returned.

6 Fiscal Dishonesty and/or Breach of Fiduciary Responsibility - 5100(h)

7 54. Incorporating by reference the matters asserted in paragraphs 48
8 through 53, Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal
9 dishonesty and/or breach of fiduciary responsibility in that he used the Bernardis' investment
10 for his own gain and purposes; created and provided false or misleading documents and/or
11 representations related to their "investment"; and solicited their investment at a time when he
12 knew of his own precarious financial situation.

13 Dishonesty/Fraud in the Practice of Public Accountancy - 5100(c)

14 55. Incorporating herein the matters set forth in paragraphs 48 through 53,
15 Respondent is subject to discipline pursuant to Code section 5100(c) in that his conduct
16 constitutes dishonesty and/or fraud in the practice of public accountancy in that he obtained
17 funds from the Bernardis by fraudulent means and misrepresentations--cloaked in the
18 respectability of the CPA partnership--and deposited and/or used the funds for his own
19 purposes and benefit.

20 Embezzlement, Theft, Misappropriation of Funds and/or
21 Obtaining Money by Fraudulent Means or False Pretenses - 5100(j)

22 56. Incorporating herein the matters set forth in paragraphs 48 through 53,
23 Respondent is subject to discipline pursuant to Code section 5100(j) in that his conduct
24 constitutes embezzlement, theft, misappropriation of funds, and/or obtaining money by
25 fraudulent means or false pretenses with respect to each purported investment of capital,
26 earnings and interest, in that his conduct constitutes the unauthorized taking of his clients'
27 monies for his own use, having provided continued, but false, oral and documentary

1 assurance that the investment was sound and secured.

2 Knowing Preparation, Publication or Dissemination of
3 False, Fraudulent or Materially Misleading
4 Financial Reports or Information - 5100(i)

5 57. Incorporating herein the matters set forth in paragraphs 49 through 52,
6 Respondent is subject to discipline for each reason stated below pursuant to Code section
7 5100(i) in that he prepared and gave to the Bernardis each and all of the following:

- 8 a. the Assignment of Deed of Trust;
9 b. the Promissory Note; and
10 c. the attached Parcel Location Map in the Foothill Estates Subdivision,
11 Orosi.

12 INVESTOR R.B.

13 58. Respondent was known to Robin B. as the CPA for her mother, J.F.,
14 for many years.^{14/} Consequently, when her father-in-law, "investor R.B.," desired a safe
15 investment (he is aged and lives on a fixed income), Robin B. sought investment advice from
16 Respondent on behalf of her father-in-law. Respondent represented to Robin B. that he had
17 an investment pool in a municipal bond issuance from the City of Kingsburg (see paragraph
18 18 above) which was paying approximately 9% tax free. He stated that, on a principal
19 investment of approximately \$20,000, her father-in-law would be provided with tax-free
20 income of approximately \$146 per month.

21 59. In reliance on Respondent's representations to his daughter-in-law, and
22 based upon Respondent's reputation in the community as a CPA, investor R.B. invested
23 \$19,833.79, payable to "Robert F. Hill Trust Account" on or about January 27, 1997.
24 Although Respondent represented that R.B. would begin receiving his monthly checks at the
25 end of February 1997, R.B. did not receive the promised monthly income from his
26 investment. When Robin B. inquired on behalf of her father-in-law in July 1997,
27

14. Respondent believes he may have performed some accountancy services for Robin B as well.

1 Respondent hand-delivered a check for nearly \$700 to R.B.

2 60. However, Robin B. subsequently learned from another "investor" in the
3 community that her father-in-law was not the only "investor" whose investments were not
4 paying off as predicted: according to the other investor, Respondent had indicated that "...the
5 money is gone." When confronted by Robin B. and her husband, Respondent admitted that
6 the representations made when the initial investment was made in January 1997 were untrue
7 (that is, there was no investment pool and no tax-free municipal bond fund). Respondent's
8 financial affairs were already precarious at the time.

9 Fiscal Dishonesty and/or Breach of Fiduciary Responsibility

10 61. Incorporating by reference the matters asserted in paragraphs 58
11 through 60, Respondent is subject to discipline pursuant to Code section 5100(h) for fiscal
12 dishonesty in that he used R.B.'s investment for his own gain and purposes; lied about the
13 nature of the investment; provided false information regarding the nature and terms of the
14 investment; was overextended at best at the time of this solicitation for investment in a non-
15 existent "bond fund"; and reassured R. B. and his daughter-in-law by his statements and
16 actions about the security and viability of this investment.

17 Dishonesty, Fraud and/or Gross Negligence - 5100(c)

18 62. Incorporating herein the matters set forth in paragraphs 58 through 60,
19 Respondent is subject to discipline pursuant to Code section 5100(c) for dishonesty in the
20 practice of public accountancy in that he misrepresented the nature of the investment.

21 63. Incorporating herein the matters set forth in paragraphs 58 through 60,
22 Respondent is subject to discipline pursuant to Code section 5100(c) for fraud in the practice
23 of public accountancy in that he obtained funds from R.B. by fraudulent means and
24 misrepresentations, relying on his reputation as a CPA, and that, contrary to his
25 representations, he deposited and/or used the funds for his own purposes and benefit.

26 ///

27 ///

1 Embezzlement, Theft, Misappropriation of Funds
2 and/or Obtaining Money by Fraudulent Means
3 or False Pretenses - 5100(j)

4 64. Incorporating herein the matters set forth in paragraphs 58 through 60,
5 Respondent is subject to discipline pursuant to Code section 5100(j) for embezzlement, theft,
6 misappropriation of funds, and/or obtaining money by fraudulent means or false pretenses in
7 that his conduct constitutes the unauthorized taking of R.B.'s monies for his own use, having
8 provided false assurance regarding the nature of the investment.

9 Knowing Preparation, Publication or Dissemination of
10 False, Fraudulent or Materially Misleading
11 Financial Reports or Information - 5100(i)

12 65. Incorporating herein the matters set forth in paragraphs 58 through 60,
13 Respondent is subject to discipline for each reason stated below pursuant to Code section
14 5100(i) in that he published false and fraudulent financial information to Robin B. and to her
15 father-in-law regarding the nature and terms of the investment.

16 **FOR FURTHER CAUSES FOR DISCIPLINE**

17 Unprofessional Conduct

18 66. Incorporating by reference all of the allegations with respect to victims
19 B.M., S.P., the Bernardis, and R.B. as alleged more particularly in paragraphs 16 through
20 65 herein, Respondent has wilfully engaged in conduct which violates the professional code
21 of conduct, rules applicable to representing clients before taxing authorities, and the standard
22 of practice with respect to practice as a CPA, particularly in his capacity representing, acting
23 on behalf of, or providing services to, clients as a licensed CPA, in violation of Code section
24 5100, Board Rule 57 (prohibiting conflicts of interest) and applicable professional standards,
25 and cause for discipline has thereby been established.

26 Unauthorized Practice

27 **Practice Without a Valid Permit**

 67. On or about August 27, 1998, Respondent Robert Hill represented to

1 Board representatives at an investigative hearing that he practices public accountancy^{15/} and
2 has been "holding out" as a certified public accountant on a continuous basis in the last
3 several years. Based upon his own admission, he is subject to discipline for unprofessional
4 conduct under Code section 5100(f) in conjunction with Code sections 5050, 5051, and 5121
5 for unlicensed practice based upon his continuous practice of public accountancy after the
6 expiration of his certified public accountant certificate on April 1, 1998.

7 68. Incorporating herein the matters references in paragraph 48 and the
8 accompanying footnote, Respondent is subject to disciplinary action pursuant to Code section
9 5100(f) in conjunction with Code section 5050 for practicing as a licensed CPA partnership,
10 on dates known to Respondent but not to complainant, prior to having obtained a partnership
11 license from the Board.

12 **Practice In Violation of Continuing Education Requirements**

13 69. Respondent is subject to disciplinary action pursuant to Code section
14 5100(f) in conjunction with Board Rules 87, 89 and 94 in that, in connection with his
15 appearance at an investigative hearing on August 27, 1998, the continuing education attested
16 to by Respondent for his prior renewal period (April 1, 1996 to March 31, 1998) does not
17 meet the requirements for licensure. Respondent's verification at the time of renewal that he
18 met the requirements was a false statement. Respondent is unable to produce records to
19 substantiate his completion of the requisite continuing education and to support the renewal
20 of his license which was based in part upon his representation that the requisite amount of
21 qualifying continuing education was completed when in truth and in fact it was not.

22 **OTHER MATTERS**

23 70. Pursuant to Code section 5107, it is requested that the administrative
24 law judge, as part of the proposed decision in this proceeding, direct Respondent to pay to
25 the Board all reasonable costs of investigation and prosecution in this case, including, but not
26

27 15. Respondent also testified under oath that he is working "afternoons" for two clients in a business
development (customer relations, marketing, etc.) capacity. He stated that he is not being paid for this work.

limited to, attorneys' fees.

71. It is charged, in aggravation of penalty, that Respondent's conduct took advantage of positions of trust or confidence to commit the offenses and that his conduct consisted of misrepresentations; several unauthorized instances of both taking funds from his clients and using them as his own over a substantial period of years. It is estimated that the total losses to victims (including many not investigated by the Board) easily exceeds \$4,000,000 and will possibly mount as ongoing investigations by federal and local authorities are concluded.

72. It is charged, in aggravation of penalty, that Respondent has blatantly disregarded the licensing requirements of the Board, and, in representing himself as a duly licensed CPA, has seriously damaged the public trust: because of his clients' reliance on his representation of valid licensure, he has both contributed to and has compounded the damage caused to his clients. Further, his conduct toward his clients violates the most fundamental principles of the profession's ethical standards.

PRAYER

WHEREFORE, complainant requests that the Board hold a hearing on the matters alleged herein, and that following said hearing, the Board issue a decision:

1. Revoking, suspending, or otherwise imposing discipline on Certified Public Accountant Certificate Number No. CPA 32900, heretofore issued to Respondent Robert F. Hill;

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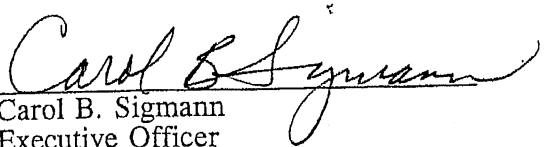
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2. Awarding the Board costs as provided by statute; and
3. Taking such other and further action as the Board deems proper.

DATED: September 16, 1998



Carol B. Sigmann
Executive Officer
Board of Accountancy
Department of Consumer Affairs
State of California

Complainant

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(9/15/98)